



TAX BULLETIN 05-7

Virginia Department of Taxation

May 31, 2005

RETAIL SALES AND USE TAX

FOOD TAX RATE REDUCTION

Effective July 1, 2005, the combined state and local sales and use tax rate on food for home consumption will be 2½%. House Bill 1638 and Senate Bill 708 (Chapters 521 and 487) enacted by the 2005 General Assembly and recently signed into law by Governor Warner, reduce the state sales and use tax rate on food for home consumption from 3% to 1½% effective July 1, 2005. The law change does not affect the imposition of the 1% local sales and use tax. This legislation accelerated provisions enacted in 2004 that would have reduced the state sales and use tax rate of food for home consumption over a three-year period extending from 2005 through 2007.

Definition of Food

The reduced 2½% rate applies to all sales of food for home consumption on and after July 1, 2005. The definition of "food purchased for home consumption" remains unchanged by this legislative change. Food for home consumption by humans, as defined under the Food Stamp Act of 1977, 7 U.S.C. § 2012, qualifies for the reduced sales tax rate. The definition includes most staple grocery food items and cold prepared foods packaged for home consumption. Specifically excluded from the definition of food for home consumption are alcoholic beverages, tobacco, and prepared hot foods sold for immediate consumption on and off the premises. The reduced sales and use tax rate does not apply to seeds and plants which produce food for human consumption.

Retailer Classifications

The reduced sales tax rate will apply to foods that are deemed eligible under the federal food stamp definition without regard to the nature of the retailer making the sale of the food or whether the retailer participates in the federal food stamp program administered by the USDA.

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Generally, the following retailers should charge the reduced sales tax rate on sales of eligible food and beverages: bakeries, cafes, cafeterias, convenience stores, delicatessens, department stores, diners, doughnut and pastry shops, drug and sundry stores, farmer's markets, grocery stores, ice cream shops, lunch counters, mail order companies, supermarkets, sandwich shops, snack bars, specialty meat and produce stores, video stores, and weight reduction establishments.

Exceptions

Some vendors are presumed sellers of food for immediate consumption and may not impose the reduced sales tax rate on sales of eligible foods. These include caterers, concession vendors, entertainment facilities (theme parks, sports arenas, stadiums), fair and carnival vendors, gift shops, hamburger and hot dogs stands, honor snack vendors, ice cream stands and trucks, mobile food vendors, movie theaters, newsstands, and vending machine vendors.

Fast Food Establishment/Restaurants

Food sold by a retail establishment, whose gross receipts derived from the sale of food for immediate consumption, constitutes more than 80% of the total gross receipts of the establishment is not eligible for the reduced rate. For purposes of determining the "80% rule", a retail establishment includes motor fuel sales in determining their total gross receipts. This means that food sold by most fast food establishments and restaurants does not qualify for the reduced rate and such businesses do not have to keep separate records for food sales for take out orders. Generally, food for home consumption sold by convenience stores, qualifies for the reduced rate.

Retail Sales Tax Filing Requirements

Generally

For the period beginning July 1, 2005, the sales and use tax returns and instructions will be revised to allow for the reporting of qualifying food sales at the new reduced sales tax rate. As compensation for collecting, accounting for and remitting the state sales tax, a dealer is allowed a discount of 2%, 3%, or 4%, depending on the volume of total taxable sales, of the first 3% of the state tax due for a given period, provided the return is timely filed. Dealers selling both food and nonfood will be required to calculate separate dealer discounts based on the class of sales. Effective July 1, 2005, dealers selling food for home consumption will calculate the dealer's discount on food at either the 2%, 3%, or 4% rate depending on total taxable sales. The dealer's discount on

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nonfood items, applicable to the first 3% of state tax, will be calculated in accordance with the factors currently used. For purposes of determining which discount rate is applicable to each class of sales, qualifying food sales and nonfood items are aggregated to determine total monthly taxable sales. The following chart shows the dealer discount factors that should be used for returns filed for sales on and after July 1, 2005.

Total Monthly Taxable Sales		Food Tax	General Sales Tax
At Least	But Less Than		
\$0	\$62,501	.04	.03
\$62,501	\$208,001	.03	.0225
\$208,001	And up	.02	.015

Example: A retailer has total taxable food sales of \$50,000 and total taxable nonfood sales of \$60,000, for total taxable sales of \$110,000. The retailer would enjoy a dealer's discount of 3% on their food sales and 2.25% on their nonfood sales.

Eligible Food and Beverages

The following lists of foods and beverages are categorized according to their eligibility under the federal food stamp definition. Food that is not considered "eligible food" under the federal food stamp program continues to be fully taxable at the 5.0% rate. TAX has relied upon the guidelines issued by the United States Department of Agriculture (USDA) to define foods that are eligible for the reduced sales tax rate. The lists shown below are intended as an illustrative guide and are not intended to be all-inclusive. In all cases the defining condition is that the item must be food for home consumption.

Staple food items:

- Beans and peas, breads, canned foods, cereals, dairy products (including cheese, milk, and ice cream), edible gourds, egg products, flour products, frozen foods, fruits (including dried and candy-coated fruit), grain products, meats (including fish, shellfish, and poultry), nuts, pumpkins, sugar products and sugar substitutes, and vegetables.

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Accessory food items:

- Artificial food coloring, bottled drinking water (spring, purified, and sterilized), carbonated and noncarbonated beverages and drinks (including fruit juices, powdered soft drink crystals and mixes), cocoa products, coffee products and coffee substitutes, condiments, extracts, flavorings, herbs, marshmallow products, nondairy creamers, seasonings and spices, soups (packaged for home consumption), and tea products.

Snack foods:

- Beef jerky, candy, candy-coated and chocolate-coated products, confectionery, chewing gum, extruded snacks (including balls, curls, filled snacks, puffs, and twists), fabricated snacks (including food bars or squares, grain cakes, and shoestring potato snacks), fruit-flavored snacks (fruit roll-ups and like items), granola bars, mints, potato chips, popcorn products (including popped popcorn packaged for home consumption), and prepackaged gelatin and puddings.

Bakery foods:

- Bagels, brownies, cakes, cookies, crackers, croissants, doughnuts, pies, pastries, bread, rolls and buns.

Cooking Ingredients:

- Baking products, butter, cooking and vegetable oils, cooking sprays, cooking wine and wine vinegar, lard, margarine (oleo), shortening, and pectin.

Health food items:

- Acidophilus milk products, soy milk, brewer's yeast, rose hips powder used for preparing tea, sunflower seeds, wheatgerm, other food products that are substituted for more commonly used food items in the diet.

Specialty dietary foods:

Foods that are diabetic or dietetic in nature and enriched or fortified food products intended to substitute in whole or in part for food in an ordinary diet, such as:

- Boost, Carnation drinks, Enfamil, Ensure, Herbalife Slim and Trim drinks, Metrecal, Ovaltine, Pediasure, Pedialyte, Shaklee drinks and bars, Slender, Slim Fast drinks, bars, and pasta foods, Sustecal drinks and puddings, Sustegen, Weight Watchers products, and other similar products.

Cold prepared foods:

The following foods are eligible when sold in single or multiple serving sizes and actually packaged for home consumption:

- Cold sandwiches, cold salads, and salad bar foods packaged for home consumption. This includes prepackaged cold sandwiches and prepackaged salads in any size container. Also included are salads prepared by the customer from a selection of items on a cold salad bar and packaged in a to-go container with a lid.
- Cold prepared foods packaged as one or more meals and marketed for home consumption. The food items are usually packaged individually in closed containers and bagged or boxed to go. This includes take-home cold dinners.
- Cold fountain drinks, beverages, juice drinks in containers with seals, lids, or tops.
- Ice cream, frozen yogurt, sherbet, sorbet, milkshakes dispensed from self-serve machines into containers with seals, lids, or tops.
- Hot prepared foods surplus at the end of the day and refrigerated overnight for sale the next day as cold food. The cold food must be packaged for home consumption. This includes fried chicken, roasted chicken, casseroles, pizzas, and side dishes.
- Cold deli trays and party platters packaged in containers affixed with lids or tops.
- Uncooked prepared pizzas packaged in boxes, plastic wrap, or other containers for home consumption.

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Miscellaneous:

- Ice.
- Infant formulas.
- Nonalcoholic cocktail mixes.

Eligible "meals":

Hot meals for immediate consumption are generally excluded under the federal food stamp definition, except in the instances listed below. The reduced sales tax rate applies to the sale of meals purchased:

- By the elderly from nonprofit meal delivery services, such as Meals-On-Wheels or other meal preparation services for the elderly;
- Through authorized drug addiction and alcoholic treatment and rehabilitation centers;
- For residents through certain certified nonprofit group living arrangements;
- Through shelters for battered women and children;
- For the homeless through authorized nonprofit establishments that feed homeless persons and restaurants authorized to accept food stamps.

The reduced sales tax rate on hot meals sold in the above instances does not affect the application of the exemption from the sales and use tax for food and food products sold to the elderly through nutrition programs administered by the Virginia Department for the Aging, and for food and food products sold through such programs to disabled or handicapped persons under the age of sixty.

Ineligible Food and Beverages

The following do not qualify as food for home consumption, and would not qualify for the reduced sales tax rate:

- Alcoholic beverages, canning supplies, cleaning products, cooking utensils, cosmetics and beauty aids, freezer bags and containers, health aids, household items, medicines, minerals, paper products, pet and animal foods and supplies, soaps and detergents, tobacco products, toiletry items, tonics, and vitamins.
- Catered food and meals.
- Hot foods and hot beverages (including hot meals).
- Cold food and cold beverages served in open containers or on plates, platters and trays for immediate consumption.

Example 1. *A grocery store sells prepared food and offers a cafe facility. A customer orders a barbeque sandwich, a side order of potato salad, a slice of cheesecake and a fountain drink. The order is served on a platter and placed on a tray to be eaten in the cafe.*

Example 2. *A delicatessen offers a seating area for patrons to eat on the premises. The customer orders a cold cut sandwich, a side order of pasta salad, and a cappuccino drink. The food is served on a plate to be eaten on the premises.*

- Eligible food packaged with ineligible food, nonfood items, or alcoholic beverages and sold together for a single price.

Example 1. *A gift basket that includes fruit packaged in a basket of other container and sold for a single price.*

Example 2. *A specialty gift basket containing meat, cheese or other eligible food together with a stuffed animal or alcoholic beverage and sold for a single price.*

- Food marketed or advertised for heating in the store whether or not hot at the point of sale.

Example. *A convenience store provides a microwave and advertises that the microwave is for customers to heat breakfast biscuits, danish, or pizza slices for immediate consumption.*

- Food and beverages kept hot to make them palatable and suitable for immediate consumption on or off the premises.

Example. *Fried chicken, ribs, macaroni and cheese and other hot foods under heat lamps or other heat sources. Hot beverages in pots or in automatic dispensers with a heat source.*

- Cold sandwiches, cold salads, and cold beverages sold in combination with hot foods for a single price.

Example. *Combo meals that include a hot entree or a hot sandwich, hot side food, and a cold fountain drink, or any combination of hot and cold foods and beverages, and sold for a single price.*

Additional Questions

If you have any questions concerning the reduced sales tax rate on "food for home consumption," please contact the Department's Office of Customer Services at (804) 367-8037. Information is also available on TAX's webpage at:
<http://www.tax.virginia.gov/>